

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: John Cody	Team: Team # 6	CCRB Case #: 200802545	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/14/2008 2:15 AM	Location of Incident: West 158th Street, between Amsterdam and Broadway	Precinct: 33	18 Mo. SOL 8/14/2009	EO SOL 8/14/2009	
Date/Time CV Reported Tue, 02/19/2008 6:10 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Tue, 02/19/2008 6:10 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Claudio Paula	27938	939188	033 PCT
2. POM Victor Disla	01923	917550	033 PCT
3. LT Osvaldo Nunez	00000	918086	033 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Pedro Roche	12637	916559	033 PCT
2. POM Ramon Velez	02591	934448	033 PCT
3. SGT Andrew Michel	05082	902013	033 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Claudio Paula	Force: PO Claudio Paula struck § 87(2)(b) with a gun.	
B.POM Claudio Paula	Force: PO Claudio Paula used physical force against § 87(2)(b)	
C.POM Victor Disla	Force: PO Victor Disla used physical force against § 87(2)(b)	
D.LT Osvaldo Nunez	Force: Lt. Osvaldo Nunez used physical force against § 87(2)(b)	
E.POM Victor Disla	Force: PO Victor Disla struck § 87(2)(b) with an asp.	
F.POM Claudio Paula	Abuse: PO Claudio Paula refused to provide his name and shield number to § 87(2)(b)	

## Synopsis

On February 15, 2008, at approximately 2:15am, § 87(2)(b) was walking in the vicinity of Amsterdam Avenue and West 159th Street in Manhattan. § 87(2)(b) alleged that Lt. Osvaldo Nunez, said, “Yo, come here.” § 87(2)(b) began running causing Lt. Nunez to give chase. § 87(2)(b) alleged that Officer Claudio Paula, of the 33rd Precinct, caught up with him and struck him in the head with a gun (Allegation A). § 87(2)(b) alleged that a number of officers, identified as Lt. Nunez, Officer Victor Disla and Officer Paula, allegedly surrounded him on the ground and began kicking and punching him (Allegations B, C and D). Officer Disla testified of attempting to using his asp on § 87(2)(b) and Officer Paula confirmed that Officer Disla struck § 87(2)(b) in his right leg with an asp (Allegation E). § 87(2)(b) was arrested for possession of a controlled substance and transported to § 87(2)(b) Hospital for treatment. § 87(2)(b) alleged that Officer Paula refused to provide him his name and shield number while he was being processed inside the 33rd Precinct (Allegation F).

§ 87(2)(b), § 87(2)(g)

## Summary of Complaint

§ 87(2)(b)

On § 87(2)(b) § 87(2)(b) was transported to § 87(2)(b) Hospital where he alleged he was pistol whipped, thrown to the floor and punched and kicked by six officers (Enc. 20A-M). On February 19, 2008, § 87(2)(b) filed this complaint with the CCRB via phone (6A-B). His § 87(2)(g)

§ 87(2)(b). On March 2, 2008, § 87(2)(b) provided a phone statement that was generally consistent with his CCRB testimony (Enc. 7A). On March 4, 2008, § 87(2)(b) was interviewed at the CCRB (Enc. 8A-D). He stated that on February 15, 2008, at approximately 2:15am, he left his cousin’s house, § 87(2)(b) § 87(2)(b) who resides at § 87(2)(b) in Manhattan. § 87(2)(b) did not witness this incident. § 87(2)(b) was wearing a wife beater style shirt, a black skull cap, and blue jeans. § 87(2)(b) walked towards Amsterdam Avenue and stopped at a bodega on the corner of West 159th Street and Amsterdam Avenue to purchase a pack of cigarettes. § 87(2)(b) only had his ID and \$30 on his person. § 87(2)(b) did not stop to speak to anyone and did not notice anyone on the street as he walked home.

As he walked, PO1, identified via investigation as Lt. Osvaldo Nunez, who § 87(2)(b) did not know was an officer at the time, emerged from behind some scaffolding saying, “Yo, come here.” Lt. Nunez was significantly larger than § 87(2)(b) but could not describe him further because he was wearing a ski-mask. Lt. Nunez did not identify himself as an officer or show him a shield. § 87(2)(b) later said that he did not believe Lt. Nunez was ever an officer but believed Lt. Nunez was working with the police in some capacity. § 87(2)(b) decided to run from Lt. Nunez, saying he believed he was going to be robbed. § 87(2)(b) ran past Lt. Nunez, describing it as a football maneuver of pivoting around him. § 87(2)(b) denied making any physical contact with Lt. Nunez. § 87(2)(b) was not aware whether Lt. Nunez pursued him but ran towards his cousin’s building. At that time, he heard the screech of a vehicle’s tires and observed an unmarked vehicle reversing towards him hitting numerous vehicles.

When § 87(2)(b) reached § 87(2)(b), he was approximately five feet from the door when he heard, “Police.” § 87(2)(b) said he “knows the drill” and has run into “trouble” before and immediately put his hands in the air. § 87(2)(b) turned to tell the officers that there was a man pursuing him but did not have time. Out of the periphery of § 87(2)(b)’s vision, he observed an officer wearing a nylon face mask, covering his nose and mouth, approaching. PO2, who § 87(2)(b) said was Officer Claudio Paula, a Hispanic male, moustache, 5’11”. § 87(2)(b) did not know this was Officer Paula at first because he was wearing a mask. However, § 87(2)(b) later identified Officer Paula when Officer Paula was processing § 87(2)(b) at the precinct based on Officer Paula’s clothing, a flight jacket, hoodie, blue jeans, and construction boots.

Officer Paula struck § 87(2)(b) with the butt of his gun on the back left side of § 87(2)(b)'s head. § 87(2)(b) said "everything went white" and he was knocked unconscious. However, in § 87(2)(b)'s initial statement he indicated that he was tackled before Officer Paula struck him with a gun. § 87(2)(b) was not aware how long he was on the ground, but when he woke up he was face-down being punched and kicked all over his body, including his head, with four to six officers around him. § 87(2)(b) was struck for two to three minutes but could not say how many times he was struck. § 87(2)(b) was handcuffed on the ground and brought to his feet. In § 87(2)(b)'s initial statement to the CCRB, one of the officers said, "You'd better not say anything or I'll punch you in the face," and used profanity but made no mention of this during his CCRB testimony.

§ 87(2)(b) was placed against a wall and his pockets were searched. The officers did not find any contraband on his person, but began searching the entire block. § 87(2)(b) waited for approximately 45-60 minutes until the officers said they had found a "tin of cocaine." § 87(2)(b) denied having any narcotics on his person during this incident. A uniformed lieutenant arrived on scene along with uniformed officers and was then transported to the precinct. From there, he was transported to § 87(2)(b) Hospital. § 87(2)(b) was interviewed by Internal Affairs as well. While § 87(2)(b) was being processed by Officer Paula he requested Officer Paula's name and shield but Officer Paula would not provide it. § 87(2)(b) later learned Officer Paula was his arresting officer and got his name from the arrest paperwork.

At the hospital, § 87(2)(b) received four staples to the back of his head. Upon examining § 87(2)(b)'s leg, the hospital staff found three puncture wounds, one on his knee cap and two on his shin. The staff asked if § 87(2)(b) heard any gunshots because they believed he may have been shot. X-rays were performed on § 87(2)(b)'s leg and he was told his wounds looked to be caused either by an ice-pick or a screw driver. § 87(2)(b) had no idea how he sustained these injuries, but believed they occurred while he was on the ground.

### **Results of Investigation**

#### ***Attempts to Contact Witnesses***

Fieldwork was performed at the incident location. Business cards were left in § 87(2)(b) with a note requesting any witnesses come forward and provide testimony. To date, nobody has contacted the CCRB regarding this incident.

#### ***Identification of Officers Interviewed***

Officer Paula was interviewed because he was § 87(2)(b)'s arresting officer. He identified everyone that was present with him at the time of his interview, resulting in the interview of the rest of the officers in this case.

#### ***Subject Officer: PO Claudio Paula***

On May 15, 2008, Officer Claudio Paula, of the 33<sup>rd</sup> Precinct, was interviewed at the CCRB (Enc. 11A-C). He is a § 87(2)(b). On February 14, 2008, he worked from 6:00pm until 2:00am in plainclothes anti-crime patrol with Lt. Nunez, Officer Disla, Officer Velez and Officer Roche in an unmarked black Crown Victoria. Officer Paula had the following entries in his memo-book: "0235: Lt. Nunez try to stop a male for possession of narcotics; 0236: foot chase; 0237: male was tackled in front of § 87(2)(b), deft hit head on the wall of the building and the concrete of the sidewalk; 0239: one under from the location A/O recovered a thing foil from under a car that the deft put in there; 0243: Perp taken to 033 PCT by a sector and then to the hospital CPMC ACR# § 87(2)(b) EMT# § 87(2)(b) on line § 87(2)(b), vouchers # § 87(2)(b) + § 87(2)(b) ...1240: IAB Takes copy's of paperwork + my 9 mm gun for a test log #; 1625: A/O is informed by the desk Lt. Garcia that I had to pick my 9 mm at § 87(2)(b) Group 54; 1725: A/O got his 9 mm from IAB location" (Enc. 9A-D). Officer Paula's arrest report for this incident stated, "At T/P/O deft was in possession of 1 thing foil containing cocaine in public, as A/O attempted to place deft under arrest deft resisted by fighting violently with officers. Deft has four active warrants" (Enc. 10A-C). § 87(2)(b) was charged with criminal possession of a controlled substance and tampering with evidence, obstruction of governmental administration and resisting arrest.

On May 14, 2008, Officer Paula stated his SNEU team was doing an operation in the vicinity of 160<sup>th</sup> Street in Manhattan at approximately 10:00pm. Officer Paula explained that there had been a foot pursuit which resulted in a unidentified perpetrator assaulting Officer Strong from SNEU, causing him a

serious injury. They traced a cell phone they retrieved from the scene to § 87(2)(b), but they were not sure which apartment the suspect lived in, they just knew it was on the second floor. Officer Paula was wearing blue jeans and a flight jacket. Officer Paula said he probably was wearing a pair of Timberlands but he did not know for sure (he was not wearing a hoodie). None of the officers were wearing balaclavas or masks over their faces. Officer Paula was the driver and he was talking to Lt. Nunez, who was outside the vehicle. Sergeant Andrew Michel, supervisor of the SNEU team, was in the passenger seat, and Officer Roche was in the backseat.

While they were speaking, Lt. Nunez observed § 87(2)(b) dark-skinned male, 5'6", blue or black jeans, a hat and leather jacket, walking down the street. § 87(2)(b) had a tin in his hands, which is how drug dealers usually package cocaine in that area. § 87(2)(b) opened the tin foil and was looking inside it. § 87(2)(b) was approximately 10-15 feet when Officer Paula observed him. Officer Paula said he could tell it was a substance but later said he could not exactly see what § 87(2)(b) had in his hand. Lt. Nunez approached § 87(2)(b) took out his shield and said, "New York City Police Department, let me see your hands." § 87(2)(b) put the tin into his right pocket. Lt. Nunez went to grab § 87(2)(b)'s hand but § 87(2)(b) pushed Lt. Nunez in his chest area and began running. Officer Paula got out of the vehicle and began pursuing § 87(2)(b). Officer Paula never gave any orders over the radio; his radio was in his pocket. Officer Paula did not have anything in his hands as he pursued § 87(2)(b). Officer Disla and Officer Velez, who were in a unmarked Impala, were parked nearby. They began driving towards § 87(2)(b) in reverse down the street. Officer Paula said he is faster than Lt. Nunez, so he passed Lt. Nunez and approached § 87(2)(b). § 87(2)(b) reached into his pocket and threw the tin foil under a car and then crossed over to the other side of the street. Officer Disla and Officer Velez passed Officer Paula in their vehicle and stopped it near § 87(2)(b). Officer Disla opened his car door, striking another vehicle, and ran towards § 87(2)(b). § 87(2)(b) ran into Officer Disla and Officer Disla grabbed § 87(2)(b). Officer Disla tried to take § 87(2)(b) down to the ground but § 87(2)(b) began resisting.

Officer Paula approached from behind and grabbed § 87(2)(b)'s leather jacket. Officer Paula ran 60-80 feet to catch § 87(2)(b) and Officer Paula and Officer Disla took him to the ground in a matter of seconds. All three of them hit the ground hard and Officer Paula believed it was at this point when § 87(2)(b) received his head injury that would later require staples. Officer Paula believed § 87(2)(b) either hit a nearby wall or the ground as he fell. Officer Paula did not push § 87(2)(b) but they all fell to the ground together. § 87(2)(b) fell on top of Officer Paula's arm. § 87(2)(b) was on his side and kicking out with his legs, hitting Officer Paula in the groin. Lt. Nunez was the last one to arrive.

Officer Paula was trying to handcuff § 87(2)(b) but § 87(2)(b) would not provide his hands. § 87(2)(b) was fighting and tried to push his way off the ground. After Officer Paula was kicked in the groin, Officer Disla took out his asp and hit § 87(2)(b) either once or twice in his right leg. Officer Paula was unaware how many times Officer Disla struck § 87(2)(b) because he was too busy trying to handcuff § 87(2)(b). It was not possible Officer Disla hit him in the head because Officer Disla was aiming for the leg and was near the back of § 87(2)(b). Officer Paula never struck or punched § 87(2)(b). Officer Paula did not see anyone else strike § 87(2)(b). Officer Disla struck Officer Paula's right knuckle by accident with the asp but he never went to the hospital for his injury. Officer Disla also struck Lt. Nunez in the leg. Officer Paula said the asp blows could have caused § 87(2)(b)'s puncture wounds. Officer Paula finally managed to grab one of § 87(2)(b)'s hands and put a handcuff on. Lt. Nunez put another handcuff on § 87(2)(b) and that was the end of the struggle. Officer Paula indicated that nobody from the team ever struck § 87(2)(b) with a gun and that for safety reasons he would not strike a civilian with his gun.

They brought § 87(2)(b) to his feet and the officers watched § 87(2)(b) while Officer Paula went to retrieve the narcotics which turned out to be cocaine. Sgt. Michel never became involved in this incident. The officers noticed § 87(2)(b) had some blood on the side of his face. Officer Roche and Sgt. Michel because by the time they arrived § 87(2)(b) was in handcuffs. The officers filled out an accident report because a vehicle had been struck. A marked vehicle took § 87(2)(b) to the precinct and then EMS transported him to the hospital. Officer Paula did not see § 87(2)(b) until 11:00am later that day when Officer Paula took § 87(2)(b)'s fingerprints. In the precinct, § 87(2)(b) requested Officer Paula's name and shield and Officer Paula gave § 87(2)(b) his voucher receipts and told him his name and shield were on there.

Lt. Nunez called IAB to inform them of § 87(2)(b)'s injury. IAB approached Officer Paula and took his Smith and Weston, a silver gun for lab tests, which were negative for blood or any indication alcohol or bleach were used to clean the gun.

***Subject Officer: PO Victor Disla***

On October 30, 2008, Officer Victor Disla, of the 33<sup>rd</sup> Precinct, was interviewed at the CCRB (Enc. 18A-B). He is a § 87(2)(b). On February 14, 2008, Officer Disla was working in plainclothes from 4:00pm until 12:00am doing SNEU operations with Officer Velez in an unmarked vehicle. Officer Disla did not have any entries in his memo-book regarding this incident.

Officer Disla said they were in the area because they were looking for a subject that had injured an MOS earlier in the night and had word the suspect was at the location. Officer Disla's and Officer Velez's vehicle was double-parked next to another police vehicle at the location when Officer Disla observed an individual identified as § 87(2)(b) push Lt. Nunez and begin running westbound towards Broadway. Officer Disla never became aware why Lt. Nunez was stopping § 87(2)(b). Officer Velez began driving in reverse towards Broadway, striking a vehicle. Officer Disla did not know if more than one vehicle was struck but heard only one bang. Officer Disla did not have his radio or gun in his hand when he exited the vehicle and observed § 87(2)(b) running towards him. Officer Disla identified himself as an officer, saying "Police don't move," and had his shield out. Officer Disla grabbed § 87(2)(b)'s shoulder area. § 87(2)(b) did not slow or try to get around Officer Disla but came at him at full speed and tried to tackle him down.

Seconds later, Officer Paula grabbed § 87(2)(b) from behind. As a result of Officer Paula's momentum, they all fell to the ground. Officer Paula did not strike § 87(2)(b) and neither Officer Disla nor Officer Paula ever struck § 87(2)(b) with their guns. Officer Disla did not know how § 87(2)(b) landed because Officer Disla was concerned he did not land on his own head or have his gun taken from him. On the ground, § 87(2)(b) tried to kick Officer Paula in the groin area numerous times and tried to punch officers. Lt. Nunez caught up with them and they all began trying to handcuff § 87(2)(b).

Officer Disla removed his asp and began trying to strike § 87(2)(b) in the leg area. Officer Disla did not get to his feet but remained on the ground while he attempted to strike § 87(2)(b). Officer Disla hit Officer Paula in his hand and Lt. Nunez in his calf. Officer Disla did not believe he struck § 87(2)(b). Officer Disla did not know how long it took to handcuff § 87(2)(b) and Officer Disla did not know who handcuffed § 87(2)(b). § 87(2)(b) did not say anything. Once § 87(2)(b) was handcuffed, they began looking for the owner of the vehicle they struck. Officer Disla did not see any injuries on § 87(2)(b) and did not know he received staples. Officer Disla did not know how § 87(2)(b) sustained this injury. Officer Disla did not know how § 87(2)(b) received injuries to his leg. Officer Disla has a glock and IAB never took it for testing. Officer Disla did not have any further interaction with § 87(2)(b) after he was handcuffed. Officer Disla said nobody on his team was wearing a ski mask that day.

***Subject Officer: Lt. Osvaldo Nunez***

On July 24, 2008, Lt. Osvaldo Nunez, of the 33<sup>rd</sup> Precinct, was interviewed at the CCRB (Enc. 13A-B). He is a § 87(2)(b). On February 14, 2008, he was working in plainclothes from 5:15pm until 2:00am on Special Projects assignment with Officer Paula in an unmarked vehicle. He did not have any memo-book entries regarding this incident (Enc. 12A-B).

Lt. Nunez's testimony regarding why the officers were in the area is substantially consistent with the other officers' statements in this case. Lt. Nunez was standing next to a police vehicle when he observed a black male, identified as § 87(2)(b) walking around the corner headed westbound on West 158th Street. He was approximately seven car lengths away when Lt. Nunez observed him. Lt. Nunez saw § 87(2)(b) place an object inside his vehicle. Lt. Nunez did not really know what § 87(2)(b) was wearing besides his jacket, but all his clothing was dark. Lt. Nunez did not really see the object but saw a metallic glint in the street lamp above. Lt. Nunez believed it may have been a gun and approached § 87(2)(b). As he walked towards him, he removed his shield and tried to identifying himself as an officer. Before he could finish saying, "New York Police Department," § 87(2)(b) pushed Lt. Nunez's chest with both his hands and began running. Lt. Nunez began running after § 87(2)(b). Officer Paula exited the vehicle and began running towards § 87(2)(b) eventually running past Lt. Nunez. Officer Disla and Officer Velez put their vehicle in reverse in pursuit of § 87(2)(b). As § 87(2)(b) ran he threw a piece of tinfoil in the street. Lt. Nunez did not observe this object but Officer Paula did.

When Officer Disla opened the passenger side door of the officers' vehicle, he knocked the side view mirror off another vehicle. Officer Disla ran towards § 87(2)(b) grabbing him, while at the same

time Officer Paula approached from behind and grabbed § 87(2)(b). Neither officer struck § 87(2)(b) nor did either officer have any objects in their hands. § 87(2)(b) was instantaneously brought to the ground along with the other two officers. Lt. Nunez stated that no guns were drawn during this incident and § 87(2)(b) was never struck with a gun at any time. Lt. Nunez and Officer Paula never struck § 87(2)(b) only Officer Disla did with his asp.

By the time Lt. Nunez approached, § 87(2)(b) was already on the ground curled in a fetal position to avoid being handcuffed. As a result, Officer Disla removed his asp and began striking § 87(2)(b) two to three times in his legs. Officer Disla also struck Lt. Nunez's right knee and struck Officer Paula's hand. § 87(2)(b) gave up his hands to be handcuffed. Once § 87(2)(b) was brought to his feet Lt. Nunez observed he was bleeding from his head. Officer Paula recovered the narcotics. § 87(2)(b) was brought back to the precinct and then transported to the hospital by EMS where § 87(2)(b) received staples for his head injury. Lt. Nunez believed that § 87(2)(b) received his injury from falling on the wall outside 550 West 158th Street, since when they picked § 87(2)(b) up he was right next to the wall. Lt. Nunez knew IAB took Officer Paula's gun (he believed it was a glock) to be swabbed for DNA. The results were negative. Lt. Nunez carries a Smith and Weston, a silver gun. Sgt. Michel and Officer Roche only arrived at the end of this incident and did not participate in the handcuffing of § 87(2)(b).

***Witness Officer: PO Ramon Velez***

On August 12, 2008, Officer Ramon Velez was interviewed at the CCRB (Enc. 19A-B). He is a § 87(2)(b). On February 14, 2008, Officer Velez was working in uniform from 3:00pm until 11:35pm working SNEU with Officer Disla and Officer Strong in plainclothes. Inv. Erin Donovan and Inv. Emily Hainze conducted this interview.

Officer Velez's testimony concerning why they arrived at the incident location was consistent with the other officers. Upon arriving at the location, Officer Velez and Officer Disla were inside a vehicle parked next to another police vehicle containing Sgt. Michel and other officers Officer Velez could not recall. Officer Velez was speaking to Sgt. Michel, who was in the passenger seat of the other vehicle when Sgt. Michel abruptly turned around in his vehicle and told Officer Velez that Lt. Nunez, who had also been on scene, was pursuing an individual, identified as § 87(2)(b) eastbound on the street.

Officer Velez began reversing his vehicle in pursuit of § 87(2)(b). Before Officer Velez stopped the car, Officer Disla opened his car door which struck another vehicle. Officer Disla ran out of the vehicle at that point. Officer Velez parked the vehicle and got out a couple seconds later. § 87(2)(b) was about five to ten feet away from where Officer Velez parked his car. By the time Officer Velez reached the curb, § 87(2)(b) was facedown on the ground with Officer Disla and Officer Claudio Paula attempting to handcuff him. § 87(2)(b) was resisting by shouting and moving his hands. Officer Velez never saw any officers punch or kick § 87(2)(b). Officer Velez never saw Officer Paula using any type of object on § 87(2)(b) and did not see him holding anything. Officer Velez never saw Officer Paula with his gun out. Officer Velez was not sure whether Officer Paula carries an asp. Officer Velez did not see any officer use any physical force on § 87(2)(b) and he never personally interacted with the civilian. Officer Velez described § 87(2)(b) as agitated, he was sweating and "upset." Officer Velez observed § 87(2)(b) bleeding from his head but did not know how he received that injury.

After § 87(2)(b) was handcuffed, Officer Velez had to fill out an accident report and contact the owner of the vehicle they had struck. Officer Velez later learned § 87(2)(b) was stopped because he possibly had a gun. Officer Paula recovered some narcotics in the vicinity.

***Witness Officer: Sgt. Andrew Michel***

Sgt. Andrew Michel, of the 33<sup>rd</sup> Precinct, was interviewed at the CCRB on August 7, 2008 (Enc. 15A-B). He is a § 87(2)(b). On February 14, 2008, he was working in plainclothes with Officer Roche supervising a SNEU team in an unmarked car. He had no memo-book entries pertaining to this incident (Enc. 14A-B).

Sgt. Michel stated that he, Lt. Nunez, Officer Disla, Officer Roche, Officer Velez and Officer Paula were parked on West 158th Street conducting an unrelated investigation parked in front of an address he could not recall. All their vehicles were parked in close vicinity to one another. Sgt. Michel was looking towards the right of the street when he observed Lt. Nunez run past his vehicle west-bound in pursuit of § 87(2)(b). Sgt. Michel did not know why Lt. Nunez was pursuing § 87(2)(b) or see what led up to him pursuing § 87(2)(b). Officer Paula got out of the driver seat and began pursuing § 87(2)(b) as well. Sgt. Michel moved into the driver's seat—Officer Roche remained in the backseat—and began driving

towards Amsterdam Avenue. Officer Disla and Officer Velez got into the other vehicle and began driving in reverse towards § 87(2)(b). Sgt. Michel drove towards West 157<sup>th</sup> Street, made a left, and then made a right on Broadway. Sgt. Michel was attempting to cut § 87(2)(b) off in case he made it towards Broadway.

By the time Sgt. Michel arrived, § 87(2)(b) was already in handcuffs and standing. He never had any physical interaction with § 87(2)(b) and never saw if there was a struggle to handcuff him. Sgt. Michel could not recall why they were pursuing § 87(2)(b) but said the block is a narcotics-prone location. Sgt. Michel did not observe any injuries or blood on § 87(2)(b). Sgt. Michel stayed at the location because Officer Velez and Officer Disla struck a car in pursuit of § 87(2)(b).

***Witness Officer: PO Pedro Roche***

Officer Pedro Roche, of the 33<sup>rd</sup> Precinct, was interviewed at the CCRB on August 13, 2008 (Enc. 17A-B). He is § 87(2)(b). On February 14, 2008, Officer Roche was working in plainclothes from 4:00pm until 12:00am with Sgt. Michel working SNEU in an unmarked vehicle. Officer Roche's memo-book stated, "1 under in front of 550 W 158 St PO Paula" (Enc. 16A-B).

Officer Roche's testimony was consistent with that of Sgt. Michel's. By the time Sgt. Michel and Officer Roche arrived at the scene, approximately two minutes later, the suspect, § 87(2)(b) was already in handcuffs and standing. § 87(2)(b) was bleeding from the head and speaking but Officer Roche could not understand what he was saying. Officer Roche did not know why Lt. Nunez initially started pursuing § 87(2)(b) but knew either cocaine or crack was recovered from § 87(2)(b). Officer Roche never observed any officer use force on § 87(2)(b).

***Medical Records***

On § 87(2)(b), § 87(2)(b) was transported to § 87(2)(b) Hospital (Enc. 20A-M). § 87(2)(b) chief complaint was "head laceration, gun shot wound to right leg/knee." He was assessed to have multiple gun shot wounds to his right leg and one head laceration. The records state § 87(2)(b) was assaulted by six officers and thrown to the floor and kicked and punched. § 87(2)(b) said he was pistol whipped on his head but never lost consciousness. On his right leg, he received two puncture wounds with no active bleeding and a puncture wound on his knee. The medical records once again mention the possibility of a gun shot wound to his leg. X-rays indicated there were no abnormalities or fractures on § 87(2)(b)'s person. § 87(2)(b) received staples to his head and was given Tylenol.

There were no aided reports of Line of Duty reports filled out for the officers.

***Police Documentation***

The Sprint report for this incident indicates that the 33<sup>rd</sup> Precinct SNEU sergeant radioed over a foot pursuit at 2:33am, looking for a male Hispanic, light complexion, wearing a dark North Face jacket. The sergeant called a 10-85. At 2:35am, there was one person in custody and the 33<sup>rd</sup> Precinct SNEU sergeant requested EMS at the location for a "slightly injured perp." At 2:44am, 33<sup>rd</sup> Precinct sector B stated they were transporting § 87(2)(b) to the precinct. Sprint report enclosed (Enc. 21A-E).

The prisoner holding pen roster is enclosed (Enc. 23A). A property voucher indicated there was "1 thing foil containing alleged cocaine" (Enc. 24A). The UF-18 prepared for this incident stated, "At T/P/O vehicle number 1 (Department auto 674) was backing down street in westbound direction to assist MOS in foot pursuit when recorder opened passenger door while vehicle number 1 was in motion. Vehicle number 1 passenger door struck vehicle number 2 driver side causing damage" (Enc. 22A-C). This case is still open with IAB under case number 08-0170. As of December 3, 2008, IAB's case is still on DA hold.

§ 87(2)(b)

***CCRB History***

None of the subject officers have any substantiated cases on their CCRB records that resulted in any discipline other than Officer Disla. In case 200500615 Officer Disla was substantiated for stop, threat of arrest, search of person and premises entered, which he received instructions for. § 87(2)(b) has no previous complaints with the CCRB. All histories enclosed (Enc. 2A-C, 3A, 4A-B, 5A).

## **Conclusions and Recommendations**

### ***Officer Identification***

Officer Paula was identified by name by § 87(2)(b) stated he was his arresting officer and that while he did not recognize him at first but when he went to the precinct, he recognized Officer Paula's clothing, a flight jacket, construction boots and a hoodie. Officer Paula confirmed he was wearing a flight jacket and Timberland boots. § 87(2)(b) also provided a description that matched Officer Paula's pedigree. As a result, a gun as club allegation will be pleaded against him. § 87(2)(b) did not specifically allege being hit with an asp. He stated he was repeatedly struck while on the ground. Given his position, lying face-down, it is reasonable he did not know that an asp was used. Because of this and Officer Disla's admission, the use of the asp is being pleaded against Officer Disla. All the other officers with force allegations pleaded against them admitted to be involved in the handcuffing of § 87(2)(b) and to having physical interactions with him at the time § 87(2)(b) alleged he was punched, kicked and struck by officers. Through investigation it was determined that Officer Paula, Lt. Nunez and Officer Disla were the only officers who came into physical contact with § 87(2)(b) at this point, so it is not necessary to also plead against "officers." Officer Disla admitted to swinging his asp and Officer Paula stated it made contact with § 87(2)(b). As a result, an allegation will be pleaded against Officer Disla regarding that use of force. Since § 87(2)(b) alleged Officer Paula refused to provide his name and shield number, that allegation is being pleaded against him.

### ***Undisputed Facts***

§ 87(2)(b) was walking towards his cousin's house when Lt. Nunez began pursuing him on foot. The officers used force to effect the arrest of § 87(2)(b). Officer Disla swung his asp at § 87(2)(b). § 87(2)(b) received a laceration to his head that required staples. § 87(2)(b) was arrested and transported to the hospital.

§ 87(2)(b), § 87(2)(g)

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§ 87(2)(b), § 87(2)(g)



§ 87(2)(b), § 87(2)(g)

#### ***Pleading of Allegations***

The stop in this case will not be pleaded because § 87(2)(b) was stopped on suspicion of possessing a controlled substance which was confirmed by his arrest paperwork and property vouchers. He was eventually for this as well. The search of § 87(2)(b)'s person will not be pleaded since it was performed incident to arrest. Since § 87(2)(b) never alleged he was shot to the CCRB and since the hospital never confirmed a gun shot wound was ever confirmed, no "gun fired" allegation will be pleaded.

#### ***Allegation A) PO Claudio Paula struck § 87(2)(b) with a gun.***

As addressed in the *Assessment of Evidence*, it is not entirely clear whether Officer Paula struck § 87(2)(b) with his gun. While the officers were consistent that § 87(2)(b) was not struck with a gun, § 87(2)(b) received a laceration to his head that required staples. No independent witnesses provided testimony in this case, making it difficult to ascertain what exactly transpired during this incident. § 87(2)(g)

#### ***Allegation B) PO Claudio Paula used physical force against § 87(2)(b)***

#### ***Allegation C) PO Victor Disla used physical force against § 87(2)(b)***

#### ***Allegation D) Lt. Osvaldo Nunez used physical force against § 87(2)(b)***

§ 87(2)(b) testified to being kicked and punched all about his body, including his head. § 87(2)(b) suffered a number of puncture wounds that were unexplained by the force the officers testified to. Furthermore, § 87(2)(b) may have been punched or kicked about his body, which would be a questionable use of force if § 87(2)(b) was only lying curled on the ground passively resisting as Lt. Nunez testified to.

§ 87(2)(g)

***Allegation E) PO Victor Disla struck § 87(2)(b) with an asp.***

Officer Disla testified to attempting to strike § 87(2)(b) with his asp. Officer Paula stated that Officer Disla was striking § 87(2)(b) in his right leg, where § 87(2)(b) received a number of puncture wounds. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

***Allegation F) PO Claudio Paula refused to provide his name and shield number to § 87(2)(b)***

§ 87(2)(b) claimed Officer Paula did not provide his name and shield number. Officer Paula confirmed that § 87(2)(b) requested his name and shield number but stated he provided § 87(2)(b) with a property voucher which he informed § 87(2)(b) contained his name and shield number. Officer Paula's testimony was supported by a number of factors. First, § 87(2)(b) provided Officer Paula's name to the CCRB, indicating he did obtain it and furthermore, Officer Paula was § 87(2)(b)'s arresting officer, and his name and shield number would already be on much of § 87(2)(b)'s paperwork. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Investigator:

Date:

Supervisor:

Date:

Reviewed by:

Date:

Reviewed by:

Date: